



## The United States Organizations for Bankruptcy Alternatives

5405F T.C. Jester Blvd, #3310 • Houston • Texas • 77091 • 281-820-0666

EXHIBIT 3

DATE 2/6/2009

HB 318

Page | 1

House Judiciary Committee  
February 6, 2009

Chairperson Ron Stoker  
House Judiciary Committee  
House of Representatives, State Capitol  
Helena, MT 59620

RE: HB 318 - AN ACT REGULATING DEBT SETTLEMENT PROVIDERS; PROVIDING DEFINITIONS; PROVIDING INSURANCE AND ACCOUNTING REQUIREMENTS FOR DEBT SETTLEMENT PROVIDERS; ESTABLISHING PROHIBITED PRACTICES FOR DEBT SETTLEMENT PROVIDERS; AND PROVIDING REMEDIES. Sponsor - Deborah Kottel

Dear Mr. Stoker,

Please include the present statements by the United States Organizations for Bankruptcy Alternatives ("USOBA") as testimony regarding HB 318.

### USOBA Background

As the oldest active trade association representing more than 140 member companies, USOBA was founded by members of the industry seeking representation specifically for debt settlement and outside of credit counseling and bankruptcy law. USOBA represents and advocates for the fair regulation of the industry and for the protection of consumers.

With record levels of consumers filing for bankruptcy last year, and the credit counseling industry under fire from the IRS, FTC, U.S. Senate and House, consumer advocates and the state legislatures, USOBA members are the last line of help to aid consumers before turning to bankruptcy.

### Need for Debt Settlement

USOBA will not attempt to repeat the statistics related to the immense problem of consumer debt, of which the Committee is well aware. However, it will state that consumers are left with only three options when unfortunate circumstances arise and they are left unable to pay their debt amounts when they come due:

Debt Settlement is the option that lies on the continuum between credit counseling and bankruptcy. This may be the best solution for consumers who cannot qualify for credit counseling because: they have either missed payments while enrolled in a credit counseling program; they can no longer make close to their monthly minimum payments to unsecured creditors; they do not qualify under the new rules of bankruptcy; or they prefer to honor their debts to the best of their ability rather than declare bankruptcy.



## The United States Organizations for Bankruptcy Alternatives

5405F T.C. Jester Blvd, #3310 • Houston • Texas • 77091 • 281-820-0666

House Judiciary Committee  
February 6, 2009

Page | 2

Bankruptcy should be used only as a last resort, when consumers' debt is completely insurmountable and they can no longer afford to pay any bill.

USOBA is concerned that the current HB 318 would altogether remove the option of Debt Settlement from consumers, leaving consumers with just two options: credit counseling or bankruptcy – options that they may not qualify for.

USOBA is further concerned that HB 318 does not provide for adequate consumer protective measures and contains the following additional deficiencies:

1. Lacks thorough disclosure requirements being conveyed to consumers.
2. Provides for a fee based on "principal amount," a term not defined in the bill.
3. Although a fee is allowed, it provides conflicting parameters on how said fees may be collected by debt settlement services providers.
4. Does not require a statement describing crimes of owners or partners involving moral turpitude, dishonesty or fraud.
5. Lacks provisions for an administrator to deny or revoke registration.
6. Prohibits Debt Settlement service providers from requiring consumer clients to purchase ancillary products and services.
7. Does not provide a timeframe for the length of registration, nor does it provide for renewal requirements.
8. Does not provide for allowance of registration/licensure reciprocity.
9. Does not provide for minimum customer service requirement, including a toll-free communication system.
10. Does not specify information that must be included in all consumer contracts, including description of consumer accounts enrolled in the program; estimated length of program; description of fees to be charged to the consumer; and the consumer's right to rescind the agreement, along with the terms of rescission.
11. Does not provide for a formal application process.
12. Does not clearly define the administrator.

Lastly, the bill does not grant the administrator authority to assess a fee from applicants and, thus, will have a negative fiscal impact on the State of Montana.

### Support of Fair and Reasonable Regulation

USOBA strongly advocates for regulation for the Debt Settlement industry. However, our directive is to ensure that fair and reasonable regulation includes ample consumer protections; is clear and concise; and reflects accurate expectations and requirements.



## The United States Organizations for Bankruptcy Alternatives

5405F T.C. Jester Blvd, #3310 • Houston • Texas • 77091 • 281-820-0666

House Judiciary Committee  
February 6, 2009

Page | 3

USOBA would like to offer support for a bill that provides for Debt Settlement service providers to operate and become licensed, while still maintaining the highest degree of consumer protection. At this time, HB 318 does not meet our support requirements.

### Summary

USOBA members would like nothing more than to be regulated and allowed licensure. However, HB 318 as drafted will do nothing more than decrease the amount of options available to Montana consumers and increasing bankruptcy filings. Moreover, it does not provide for the adequate protection of Montana consumers.

We urge Committee Members to vote in opposition to the advancement of HB 318. We welcome the opportunity to work closely with the Committee to ensure that Montana consumers are protected and afforded a choice when seeking debt relief assistance.

If you have any questions, comments or concerns, please do not hesitate to contact the undersigned.

Sincerely,

Jenna Keehnen  
Executive Director